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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 324

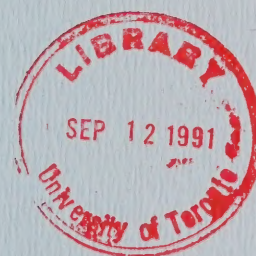
DATE: Tuesday, September 3, 1991

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249



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ASSOCIATES
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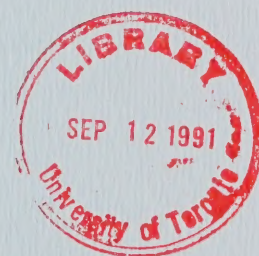
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the offices of the Ontario
Highway Transport Commission, Britannica
Building, 151 Bloor Street West, 10th Floor,
Toronto, Ontario, on Tuesday, September 3rd,
1990, commencing at 1:00 p.m.

VOLUME 324

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE)	
MR. R. TUER, Q.C.)	
MS. E. CRONK)	ONTARIO FOREST
MR. R. COSMAN)	INDUSTRIES ASSOCIATION
MR P. CASSIDY)	
MR. R. BERAM	ENVIRONMENTAL ASSESSMENT BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS AND
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MR. M. BAEDER)	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. D. COLBORNE)	GRAND COUNCIL TREATY
MR. G. KAKEWAY)	#3.
MR. CHRIS REID	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. J. ANTLE	NORTHERN ONTARIO TOURIST OUTFITTERS ASSOCIATION
MS. M. HALL	KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.

APPEARANCES: (Cont'd)

MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)		RED LAKE-EAR FALLS
MR. B. BABCOCK)	JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL		GREAT LAKES FOREST
MR. S.M. MAKUCH		CANADIAN PACIFIC FOREST PRODUCTS LTD.
MR. D. CURTIS)	ONTARIO PROFESSIONAL
MR. J. EBBS)	FORESTERS ASSOCIATION
MR. D. KING		VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

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1 ---Upon commencing at 1:10 p.m.

2 MADAM CHAIR: Good afternoon. Please be
3 seated.

4 Thank you very much for coming this
5 afternoon. We had scheduled this date previously in
6 Thunder Bay to hear submissions about the scheduling of
7 the case by the Ontario Federation of Anglers & Hunters
8 and the Northern Ontario Tourist Outfitters Association
9 who are forming a coalition to present their evidence
10 to the Board.

11 The Board has a list of issues it would
12 like to canvass during this session but, before I do
13 that, the Board has something to say about not hearing
14 the evidence of the Ontario Metis and Aboriginal
15 Association.

16 We were scheduled in Thunder Bay for the
17 week to hear that evidence. Mr. Pascoe had been given
18 some warning, I believe on Friday, that a situation had
19 arisen in which the counsel, Mr. Chris Reid, and
20 witnesses for his first panel were involved in some
21 business in northern Ontario and Mr. Reid didn't know
22 at that point if he could produce his witnesses for
23 today or not.

24 Mr. Reid was subsequently contacted by
25 counsel for the Board, Mr. Ron Beram, and had repeated

1 discussions with Mr. Pascoe, and the gist of it is OMAA
2 has not adhered to its schedule to begin its case, and
3 the Board is notifying OMAA that it has scheduled five
4 hearing days left, the 11th, 12th, 13th, 16th and 19th
5 of September, we hope that they will begin their
6 evidence as scheduled. And with respect to any
7 evidence they might have remaining over these five
8 days, the Board will decide when and where and if it
9 will hear the rest of OMAA's case.

10 The Board has not addressed OMAA's
11 request to add a possible fifth panel of evidence to
12 its case and we won't be giving leave to that of course
13 until these other matters are sorted out.

14 An additional comment about the OMAA
15 situation is that the Board will not reschedule or
16 change the schedule to hear NAN's evidence. They will
17 begin in September, on September 25th, and end on
18 October 17th as scheduled originally.

19 Have any of the parties today heard
20 anything more recent with respect to Mr. Reid's
21 situation?

22 (no response)

23 All right. Before we begin this
24 discussion on the schedule of OFAH's case, I might
25 quickly go through the matters that the Board wishes to

1 have addressed today.

2 Obviously we're in receipt of Mr. Hanna's
3 letter of August the 26th in which he proposes a new
4 schedule for his client's case and before making a
5 ruling on that schedule the Board wanted to satisfy
6 itself on a number of matters.

7 The first matter had to do with whether
8 Mr. Hanna's proposed schedule in any way is seen as
9 being unfair or prejudicial to any of the other parties
10 at the hearing.

11 Secondly, we wanted to get some better
12 idea of who the witnesses will be for the OFAH.

13 For example, if many of the coalition's
14 witnesses will be OFAH staff and experts who presumably
15 worked on developing the terms and conditions for the
16 Ontario Federation of Anglers & Hunters, then the Board
17 would have some reassurance that the preparation time
18 proposed by Mr. Hanna for his case might be adequate.

19 If he is proposing to bring witnesses who
20 are new to the hearing and haven't been involved so
21 far, then the Board might have some concerns that they
22 couldn't be ready in time.

23 There is also the outstanding issue of
24 Jack Ward Thomas. Mr. Hanna and the other parties were
25 making a strong case to the Board some months ago that

1 Dr. Thomas is someone the Board should really hear from
2 and we would like to know from Mr. Hanna if it is his
3 intention to call Dr. Thomas or, as he had mentioned
4 earlier, whether he might be asking the Board to call
5 Dr. Thomas as a witness. We would like to get that
6 cleared up.

7 Mr. Beram, our counsel, wrote a letter to
8 Mr. Hanna recently, the date of that letter was August
9 28th, and in the letter Mr. Beram had asked Mr. Hanna
10 if he could give the Board some reassurance that the
11 coalition's case is in a sufficiently advanced state of
12 preparation that they could indeed meet the starting
13 deadline of January, and the Board is hopeful that Mr.
14 Hanna would be able to provide some reassurance to that
15 effect.

16 In addition, the Board wishes to discuss
17 with Mr. Hanna whether an involvement of Mr. Beram with
18 respect to assisting the coalition might be welcome by
19 it. The Board has been considering the idea that
20 perhaps Mr. Beram could provide advice to the coalition
21 with respect to scheduling and expediting their case,
22 where they would see fit to call on Mr. Beram for that
23 purpose, and if that would be of some assistance to the
24 OFAH, then the Board would be willing to discuss that
25 possibility.

1 In addition, such an association might
2 provide the Board with some signal that we are on
3 schedule, that the case indeed will be starting on
4 whatever schedule is finally agreed upon.

5 Another issue the Board wanted to canvass
6 with the parties today is, if the Board were to agree
7 to Mr. Hanna's schedule at the beginning of January, do
8 the parties have some useful suggestions with respect
9 to how the month of November and into December could be
10 usefully used by the Board.

11 Some ideas that have come to Mr. Pascoe
12 include going ahead earlier than planned with the
13 Ottawa public hearing. We obviously will have to
14 consider whether we want to hear any more evidence from
15 OMAA, and perhaps the evidence of Dr. Thomas might be
16 considered in that time period that will become
17 available should the Board agree to the proposed
18 schedule of the OFAH and NOTO.

19 Another area the Board wishes to discuss
20 today - and this is not only with respect to the
21 coalition's case but with respect to all parties and
22 the remainder of the hearing, and that includes reply
23 evidence and arguments by the parties - and, that is:
24 What sort of action should the Board be considering
25 with respect to obliging parties to adhere to set

1 schedules and deadlines, what recourse does this Board
2 have in the absence of the power to award costs to
3 convince parties that the best thing for them to do is
4 to adhere to our time schedules.

5 At the end of this session we will be
6 instructing Mr. Beram to put together a report for the
7 Board on various options that the Board might have
8 available to it under various pieces of legislation,
9 and we're going to ask Mr. Beram to circulate his
10 advice to the Board and to the other parties for their
11 input before the Board considers which, if any, of Mr.
12 Beram's pieces of advice it might wish to follow.

13 On a final matter, the Board wishes to
14 hear from Mr. Hanna on when his clients, as represented
15 by Mr. Richard Morgan and Mr. James Grayston could
16 appear before the Board. The Board has asked for Mr.
17 Hanna's clients to come to the hearing and talk to us
18 because we're still a bit unsure about whether the
19 coalition will definitely be proceeding with its case.
20 It wasn't clear from Mr. Hanna's letter of August the
21 26th whether the financial burden he identified is
22 still a consideration with respect to the coalition
23 proceeding with its case.

24 On page 2 Mr. Hanna informs us that they
25 are still scrambling to find additional funds to make

1 up for the intervenor funding shortfall. The Board was
2 hopeful that Messrs. Morgan and Grayston might be able
3 to reassure us that indeed funding was no longer -
4 funding is always a problem, not that funding was no
5 longer a problem, the Board is very appreciative of Mr.
6 Hanna's complaints in that respect - but that funding
7 would not prevent them from getting their case started
8 some time in January and completing it.

9 On a related matter the Board certainly
10 applauds the coalition's attempt to streamline hearing
11 evidence by joining forces and our question about the
12 durability of the coalition as posed by Mr. Beram in
13 his letter was not meant to be construed as being
14 critical of the coalition. The Board simply wants,
15 again, reassurance that the coalition is prepared to
16 proceed with its case, that they can make the deadlines
17 they have proposed, and that the commitment to proceed
18 is a very solid one.

19 That is our list of matters that we want
20 to get through this afternoon. The parties might be
21 prepared to address some of those today. We have not
22 set a date for making our ruling on the scheduling of
23 OFAH's case because we wanted to clarify these various
24 matters with the coalition, and I am glad to see that
25 Mr. Hanna is here today, and the Board will be

1 instructing Mr. Beram after this session to get in
2 touch with Mr. Morgan and Mr. Grayston to see whether
3 they will be appearing before the Board to make any
4 submissions in this regard as well.

5 So, Mr. Hanna, do you wish to start
6 addressing some of these matters or would you like the
7 Board to canvass various of these matters with the
8 parties to start with?

9 MR. HANNA: Madam Chair, looking at the
10 list of issues that you've raised, it would seem to me
11 premature to discuss the details if there's other
12 parties here that feel that the schedule is unfair or
13 prejudicial to their position. So I think that has to
14 be dealt with first, and then we can deal with the
15 other issues you have raised.

16 MADAM CHAIR: Thank you, Mr. Hanna, it's
17 a good suggestion.

18 Why don't we start with Forests for
19 Tomorrow. We have in our possession a letter from Mr.
20 Lindgren dated August the 21st.

21 Mr. Lindgren, do you have anything to add
22 in your letter with respect to the difficulties of any
23 changes in scheduling to the OFAH's case as proposed by
24 Mr. Hanna?

25 MR. LINDGREN: Just very briefly, Madam

1 Chair. When I wrote the letter on August 21st I, of
2 course, did not have any idea what the proposed
3 schedule would be. Since that time we, of course, have
4 received Mr. Hanna's letter dated the 26th. I believe
5 that Ms. Swenarchuk has some further comments on the
6 issue of potential prejudice.

7 MS. SWENARCHUK: Madam Chair, I'm not in
8 a position to address today all of the issues that you
9 have raised, particularly those having to do with the
10 Board's options to enforce future compliance amongst
11 parties. I just wanted to make a few brief statements
12 with regard to the scheduling of the OFAH case.

13 The first is to correct the record. In
14 Mr. Hanna's letter of August 30th at the bottom of the
15 second page he has indicated that Forests for Tomorrow
16 were repeatedly late in submitting their witness
17 statements and interrogatory responses, et cetera, and
18 that is factually inaccurate.

19 The delivery of some interrogatory
20 responses were late, that's correct. In some cases the
21 delivery to us of OFAH interrogatories was late, but
22 there was no lateness in the delivery of any of FFT's
23 witness statements. I just want to make that clear.

24 It's the position of FFT that granting
25 the adjournment that Mr. Hanna is requesting is not in

1 the interest of the hearing or of the parties to the
2 hearing. It's our position that our interests are best
3 served by moving this hearing ahead as quickly as
4 possible.

5 Funding is an issue for all of us and my
6 clients' interests are best served by completing this
7 hearing as quickly as possible and, therefore, our
8 position on this request is to respectfully request
9 that it be denied and that the OFAH be required to
10 proceed on the date previously established.

11 I might just add to that that every
12 party, in my experience, must take into account its
13 funding availability in planning its case. Had more
14 funds been available for Forests for Tomorrow, we had
15 at least another ten topics that we wished to address.
16 We were required to operate and to plan our case in
17 accordance with the funds that were available to us
18 and, frankly, we have never accepted the OFAH position
19 that a certain amount of money is necessary for it to
20 present a case.

21 The amount of funding available to the
22 Federation from the recent funding panel decision is a
23 matter of record and it would be our view that it's
24 necessary for them as a party, as for every other
25 party, to simply plan their case in accordance with the

1 funds available.

2 We are very concerned with the continual
3 delays possible here and we're particularly concerned
4 that delaying the commencement of their case until
5 January may be one delay and that future delays may
6 also occur.

7 Other options certainly exist for a party
8 facing the funding problem, such options as planning a
9 smaller number of panels that can be mounted with the
10 funds available with the possibility, should the Board
11 agree, of mounting later panels should additional
12 funding become available during the term of the first
13 presentation of evidence.

14 Those are the kinds of possibilities that
15 I think other parties might look at here, but the
16 argument that we may or may not present a case because
17 we have limited funding, to Forests for Tomorrow, is
18 not a reasonable argument for a delay in the entire
19 hearing process.

20 Our submission is that the case be
21 planned in accordance with the funds available and in
22 accordance with the Board's deadlines for presenting
23 it, and that that be the opportunity given to this
24 party as to other parties.

25 MADAM CHAIR: Do any of the other parties

1 wish to address the issue of whether there is something
2 unfair or prejudicial to their clients with respect to
3 a postponement in the beginning of OFAH's case beyond
4 the November date?

5 Mr. Freidin?

6 MR. FREIDIN: I would just like to
7 indicate that Ms. Swenarchuk does not speak for the
8 proponent when she says: In the view of Forests for
9 Tomorrow it's not in the interest of the parties for an
10 adjournment.

11 The proponent has no objection to the
12 scheduling proposed. The proponent does not feel that
13 it will be prejudiced by the schedule being proposed
14 and, as it has always been the prime objective of the
15 proponent, it still is, that the parties present clear
16 and helpful evidence to the Board, and if the Board is
17 convinced that an adjournment is necessary for that
18 purpose then, in my view, an adjournment should be
19 granted.

20 MADAM CHAIR: Mr. Cassidy?

21 MR. CASSIDY: Madam Chair, with respect
22 to this application, the possible prejudice that has
23 been identified by my client is with respect to two of
24 the interrogatory and -- I'm sorry, two of the due
25 dates for the witness statements, interrogatory due

1 dates that Mr. Hanna sets out.

2 I'm prepared to make submissions on that
3 now, not in relation to the application for the
4 postponement, but what might flow from that should the
5 Board grant that.

6 MADAM CHAIR: Why don't you tell us what
7 problems you have with that, Mr. Cassidy?

8 MR. CASSIDY: The due dates for the first
9 two witness statements are within a week of each other
10 and, in fact, within a week of the third witness
11 statement proposed to be delivered by the Anglers &
12 Hunters.

13 And, as the Board knows, there are
14 detailed rules that exist for the delivery of
15 interrogatories within time frames. They have been
16 abridged here somewhat by Mr. Hanna in his proposal
17 and, while we have some understanding of that, in the
18 context of this proposal it is going to be problematic
19 for us in the absence of seeing what these witness
20 statements are to deal with three witness statements
21 within that very short period of time.

22 And what we are proposing is that if this
23 proposed schedule is approved by the Board that one of
24 the first two witness statements be moved up one week
25 for the delivery date to give us one extra week to

1 review that witness statement. I'm suggesting the
2 first one be moved up to October 14th or thereabouts.

3 With respect to the other dates, they're
4 all very close, it's just going to cause not only us,
5 but I suspect others, some very real difficulties in
6 meeting deadlines, but we're prepared to try and work
7 with that, but the first one is going to be a real
8 problem. And that is the possible prejudice that has
9 been identified.

10 MADAM CHAIR: Thank you, Mr. Cassidy.

11 Ms. Seaborn?

12 MS. SEABORN: Yes, thank you, Madam
13 Chair.

14 Our position with respect to the
15 adjournment application is really tied to what the
16 Board has identified as its sixth issue, I believe, and
17 that was the issue of: What could the Board usefully
18 do in the months of November and December if the
19 application were granted. I would like to speak to
20 that issue and I will when that item is reached.

21 With respect to the issue though that
22 you've raised, it's our position that we can certainly
23 relax the interrogatory process in relation to
24 questions to suit Mr. Hanna's schedule and, in fact,
25 we're quite prepared to facilitate that process if

1 there was a possibility of Mr. Hanna calling his first
2 witness statement prior to Christmas based on his
3 schedule, which I believe has his first witness
4 statement being delivered at the end of October.

5 And our position is, really, we are
6 prepared to do whatever we can to move the hearing
7 along. We will speed up our review in these
8 circumstances, and that we think the adjournment
9 request should also be looked upon in terms of what
10 could usefully be done in the intervening weeks should
11 the Board grant the adjournment so that we don't have a
12 lot of downtime and try and save some time at the end
13 of the day.

14 MADAM CHAIR: Thank you.

15 Excuse me. Mr. Hunter, did you have
16 anything to say on this matter?

17 MR. HUNTER: I certainly think that we --
18 on prejudice, I think in the circumstances, we take no
19 position at this time.

20 MADAM CHAIR: Mr. Hanna, do you wish to
21 begin your submissions with respect to some of the
22 issues that the Board has raised, and I believe the
23 first one was the item of: Which witnesses would you
24 would be calling in your case, are they identified, and
25 do you have anything to report to the Board with

1 respect to the state of preparedness of your case?

2 MR. HANNA: Madam Chair, in our
3 submissions to the intervenor funding panel we provided
4 to the hearing panel detailed descriptions of the
5 witness panels that we were proposing to call and
6 identified the witnesses that we are intending to call
7 at that time.

8 There has been some minor changes. There
9 are several witnesses, I recall, in areas that we are
10 still pursuing, but basically what was submitted at the
11 intervenor funding panel is where we stand at the
12 present time in terms of witnesses who have been
13 subpoenaed.

14 In terms of the composition of the
15 witnesses relative to staff versus retained
16 consultants, I believe you'll see that on I believe - I
17 may be corrected on this - three of the 10 panels that
18 are being proposed to be called at the present time are
19 comprised of OFAH or NOTO staff or members of the
20 organizations.

21 In terms of preparedness, I appreciate
22 the Board's differentiating between OFAH staff and what
23 might be termed new witnesses, witnesses not familiar
24 with the hearing itself, it is something that we had
25 anticipated some time ago and, in keeping with that, we

1 have prepared detailed cross-referencing associated
2 with panels with terms and conditions and witness
3 statements, cross-examinations, and all of the various
4 proceedings of the hearings.

5 That information has, over the summer,
6 had two people working on it putting that in a form
7 that will be available to the witnesses.

8 However, in making these statements I
9 think it's imperative that the Board understand that
10 the situation of the coalition's case has been in limbo
11 and I think I set that out very clearly in the letter
12 that I originally sent to you requesting leave for a
13 new schedule for the hearing.

14 That situation still exists to a certain
15 extent, as you have drawn attention to, that the
16 coalition is scrambling for funds, it's not a dead
17 issue at the present time.

18 The directions I have been given at this
19 time is to proceed with preparing a case, but I can
20 tell you that it's also on the agenda of both boards to
21 review that position early in this month.

22 I can't provide you with any further
23 elucidation at this time until I receive directions
24 from the boards. All I can tell you is that there is
25 very serious options being considered and I'm awaiting

1 instructions.

2 MADAM CHAIR: Mr. Hanna, it hasn't been a
3 practice of this panel to read intervenor funding
4 decisions. Are you suggesting that we go into the most
5 recent intervenor funding decision and read it
6 thoroughly and pull out the details on what you're
7 proposing with respect to witnesses and the evidence
8 you're proposing to bring by each witness panel?

9 MR. HANNA: Madam Chair, it's in the same
10 form. I am quite prepared to send that to the Board,
11 if that would be of assistance.

12 Because of the way it had been presented
13 I thought it was fairly was straightforward, but if it
14 isn't presently available to the Board, I would
15 certainly be prepared to put that together and submit
16 it to you.

17 MADAM CHAIR: Well, we can certainly get
18 it and go through it very carefully and pull out that
19 evidence. But are we to understand that as of today
20 you are proposing 10 witness panels, and how many
21 witnesses?

22 MR. HANNA: I'm sorry, I don't have that
23 number right at the moment.

24 MADAM CHAIR: And are we to understand
25 further that in the next few weeks the coalition could

1 decide not to participate in the hearing or to change
2 its participation with respect to proceeding with its
3 own case.

4 MR. HANNA: Yes.

5 MADAM CHAIR: And what is the date of the
6 meeting where this will be decided?

7 MR. HANNA: The one meeting will be
8 occurring next week and the other meeting of the board
9 of directors I believe is shortly thereafter.

10 MADAM CHAIR: Assuming, Mr. Hanna, that
11 the final decision of the coalition is that it wishes
12 to put in a case, what can you tell the Board with
13 respect to the preparations that you have made to
14 ensure that this case would meet the deadlines that
15 you're proposing?

16 MR. HANNA: Madam Chair, I am at a loss
17 to what more I could tell you.

18 MADAM CHAIR: How confident are you that
19 if the Board should agree to a request to delay the
20 presentation of your evidence to January that you
21 would, in fact, be ready to go ahead at that time and
22 that you could stick to the schedule you have proposed?

23 MR. HANNA: That's a very difficult
24 question for me to answer. The reason I say that, as
25 I'm sure you can appreciate, many of these matters are

1 out of my control; I'm not making those decisions,
2 those are decisions that are made by my clients in
3 terms of what priorities they want to put on this and
4 how much money and staff they're willing to allocate to
5 it.

6 I have put forward to you a proposal that
7 I believe is doable, but I would not understate that
8 it's going to require an extraordinary effort. The
9 nature of that effort is one of the reasons that the
10 boards of the coalition are reviewing the whole issue.

11 I have made it very clear to them that
12 this is not an easy task, that it is going to require a
13 substantial amount of their own finances above and
14 beyond what has been received from intervenor funding
15 and, because of the short time that's involved and the
16 deadlines that the coalition is facing, that it is
17 probably going to be an even more expensive exercise
18 than they had originally anticipated.

19 That's the information I've given to
20 them, that's the information that is being considered
21 by those boards. What their decision will be, I
22 obviously have no basis to judge.

23 I do believe that if the resources that
24 are necessary are brought to bear it can be done, but
25 only under those circumstances, and whether that will

1 happen I can't say at this time.

2 All I can tell you, Madam Chair, is that
3 the resources that have been made available by the
4 intervenor funding are not adequate to put the case in
5 in either in its form or schedule that is presently
6 being proposed, and that's the question the coalition
7 has to consider.

8 MADAM CHAIR: While you're on your feet,
9 Mr. Hanna, do you see any useful purpose that could be
10 served by having Mr. Beram's assistance with respect to
11 scheduling and helping the coalition expedite its case
12 should a decision be made that the case will go ahead?

13 MR. HANNA: Madam Chair, I would have to
14 get instructions from my client. I wouldn't be in a
15 position to provide useful comment. It would be very
16 much a matter of how they see that type of assistance
17 might be used.

18 At this time it's not exactly clear to me
19 what Mr. Beram's role might be. All I can say to you
20 is that I can say, without consulting with the
21 coalition, they would be happy for any assistance that
22 they could muster, either financial or in terms of
23 personnel, but I am not sure of the actual role Mr.
24 Beram would play in that respect.

25 MADAM CHAIR: Well, the Board and Mr.

1 Beram aren't sure what that role would be either, but
2 if there were some room for the Board to assist you
3 with moving your case along as quickly as possible,
4 then we would be most happy to do that.

5 MR. HANNA: And I am sure the coalition
6 would be most appreciative of such assistance, Madam
7 Chair.

8 MADAM CHAIR: Before we go back to some
9 of the scheduling issues, the Board would like to know
10 why Mr. Morgan and Mr. Grayston were unable to attend
11 today?

12 MR. HANNA: I'm sorry, I don't -- they
13 basically said they were not able to attend, in
14 particular, Thunder Bay. They didn't find out about
15 this meeting -- in fact, I didn't find out about this
16 meeting in Toronto until eleven o'clock today, so that
17 it was very short notice.

18 I didn't even have a chance to talk to
19 them, I basically had to come from out of town for this
20 meeting and I hadn't even talked to Mr. Grayston or Mr.
21 Morgan today, but I know they couldn't be in Thunder
22 Bay and that was what they provided to me and I cannot
23 provide any reasons for that.

24 MADAM CHAIR: All right. Perhaps, Mr.
25 Hanna, what we will do is canvass the parties with

1 respect to how the hearing schedule can be rearranged,
2 whether to accommodate a delay in the beginning of your
3 case or, in the event that the coalition does not make
4 a case, how the entire schedule can be reworked and
5 you, Mr. Hanna, are free to comment or you can wait
6 until the end, if you wish.

7 Ms. Seaborn, you said you had some
8 comments with respect to seeing this hearing through to
9 the end?

10 MS. SEABORN: Yes, Madam Chair. I think
11 you had identified actually in your opening remarks the
12 ideas that my clients had with respect to filling the
13 time.

14 As I understand it from Mr. Pascoe,
15 there's only one party scheduled at the moment to
16 present its case in Ottawa, that is the Moslin Group
17 and, subject to how many people would react to a public
18 notice in the newspapers or mailed notices at that
19 location, it's my client's suggestion that perhaps the
20 Ottawa satellite hearing could be scheduled for some
21 time late November, early December, taking into account
22 I believe the proponent has 60 days within which to
23 give notice and obviously MNR would require some time
24 to make those arrangements.

25 We would certainly support any suggestion

1 of having Mr. Thomas appear during that period. That
2 is not something that we have been involved in so I
3 don't have any particular preference in that regard.

4 With respect to OMAA, Mr. Reid did
5 indicate in his correspondence that he thought his
6 fifth witness statement - should the Board be disposed
7 to hear that evidence - would be ready by late October,
8 and subject again to the parties being able to review
9 that more quickly than would be the normal course, it
10 would be my client's suggestion that perhaps a final
11 panel - should the Board be disposed to hear it - could
12 be heard in early December, so assuming again that Mr.
13 Reid can have that filed by the end of October.

14 I'm sorry, I don't have the date of that
15 correspondence but there was some indication from Mr.
16 Reid that late October was when that witness statement
17 can be ready. So we would certainly suggest that that
18 could be used as well.

19 MADAM CHAIR: Excuse me. Did the parties
20 receive a copy of Mr. Reid's fax received by the Board
21 today?

22 MR. CASSIDY: No.

23 MADAM CHAIR: All right. There are extra
24 copies here for the parties. It looks like it might
25 have been planned to be a two-page fax but we just have

1 one.

2 Ms. Seaborn, have you given any thought
3 to whether the Toronto satellite hearing could be done
4 before Christmas as well?

5 The Board has committed itself to doing a
6 satellite hearing in Toronto. Mr. Pascoe has been
7 scheduling some parties to appear in Toronto, but
8 perhaps that can be done separately. The Board doesn't
9 have any sense at this point of what the turnout would
10 be at a public meeting in Toronto, we would ask the
11 parties if they have any sense of that?

12 MS. SEABORN: I had understood that there
13 were maybe five parties on the list at the moment who
14 had indicated a preference to call their evidence in
15 Toronto. I don't know what communication Mr. Pascoe
16 has had with them in terms of their state of readiness
17 to go ahead over the next several weeks.

18 MADAM CHAIR: Well, it wouldn't be a
19 matter of pushing those parties ahead so much as doing
20 the public submission stage of the Toronto satellite
21 hearing.

22 MS. SEABORN: Yes. In terms of putting
23 out the notices and the normal procedures for a
24 satellite hearing, I think that's a very sensible idea
25 and, I suppose to the extent that those smaller parties

1 were quite happy to go ahead, the Board may also be
2 able to schedule their appearances at the same time and
3 then have a wrap-up in Toronto at a later time next
4 year, but certainly we would support any arrangements
5 that can be made in that regard.

6 MADAM CHAIR: Do any of the other parties
7 have any comments about changing the schedule of the
8 hearing with respect to moving up certain aspects of
9 the hearing before Christmas of this year?

10 MS. SWENARCHUK: We have nothing to add
11 to Ms. Seaborn's contributions, Madam Chair.

12 We might just add the information that --
13 we received an indication that there is quite a large
14 number of individuals who wish to appear at the Toronto
15 public hearing.

16 MADAM CHAIR: A large number of
17 individuals. Do you mean that would take longer than
18 three or four days?

19 MS. SWENARCHUK: No, probably not.

20 MADAM CHAIR: Okay, thank you.

21 MS. SWENARCHUK: To our knowledge at this
22 time.

23 MADAM CHAIR: Ms. Seaborn, in the event
24 that the coalition does not present a case, how quickly
25 will your clients be ready to present your case?

1 MS. SEABORN: I think I would have to go
2 back and speak to them about that, Madam Chair. What I
3 would suggest is that after the Board makes its
4 determination in relation to the OFAH request, that we
5 would come back with a proposal to the Board in that
6 regard.

7 As you're aware, the current order has us
8 filing our evidence within two months of the last
9 witness statement of the OFAH being filed.

10 MADAM CHAIR: Mm-hmm.

11 MS. SEABORN: And taking into account the
12 orderly flow of the hearing, I think we would have to
13 come back to the proposal that would, of course, reduce
14 any loss in hearing time to the greatest extent
15 possible.

16 MADAM CHAIR: Thank you.

17 Mr. Cassidy and Mr. Freidin, given the
18 possible scenario that the coalition will not present
19 its case, we would see an acceleration of four months
20 in the hearing schedule.

21 How long will it take you to prepare your
22 reply evidence and where are you with respect to
23 preparation of that stage of the hearing?

24 MR. CASSIDY: As was indicated, I believe
25 by my colleague Mr. Cosman, our reply would be

1 relatively short, at least in comparison to the
2 Ministry's. The process of getting that material
3 together is underway and if the hearing were expedited
4 in that format with that time frame we would do
5 everything possible to have it even further expedited,
6 and I anticipate that we will be able to meet that, so
7 that there will be no disruption to the hearing,
8 barring some unforeseen difficulty which I would advise
9 the Board of at the earliest opportunity.

10 I do not anticipate that we would be any
11 longer than what we originally estimated and we're
12 trying to go through a process of, in fact, reducing
13 that from, I believe a three-week estimate, if that's
14 what it was --

15 MADAM CHAIR: I think the last thing Mr.
16 Cosman said was probably a week.

17 MR. CASSIDY: I apologize, a week. And
18 so we will do our best to even reduce that, if we can.

19 MADAM CHAIR: Thank you, Mr. Cassidy.

20 Mr. Freidin?

21 MR. FREIDIN: Well, reply evidence, you
22 know, we have begun the process of putting together.
23 You will appreciate that we are engaged in a number of
24 activities in relation to this hearing all at the same
25 time and our timing for the preparation of reply

1 evidence, in fact, took into account an anticipated
2 case by Ontario Federation of Anglers & Hunters.

3 So the hypothetical that you pose of the
4 OFAH not calling a case would cause considerable
5 difficulty in terms of us meeting or compressing that
6 schedule for the preparation of reply evidence in any
7 substantial way. That's my assessment at the moment.

8 We are working on it as much as we can.
9 If the OFAH case does not go ahead or if the coalition
10 case does not go ahead, we will of course do whatever
11 we can to accelerate that process, but I'm in no
12 position today to indicate by how much we could
13 compress the time frame that has been set aside for
14 preparing that evidence at the present.

15 MADAM CHAIR: Well, I think all the
16 parties should be put on notice by Mr. Hanna's remarks
17 that the possibility that his clients won't be going
18 ahead with a case should be taken very seriously by the
19 parties and that the Board will, in that case, not
20 stick to its schedule of hearing argument, the last bit
21 of oral argument next December the 2nd. I think you
22 can pretty well count on the fact that we will push the
23 hearing up by as much time as would be made available
24 by not hearing OFAH's case.

25 So I suggest that plans with respect to

1 preparing reply evidence, in the case of Mr. Cassidy
2 and Mr. Freidin's clients, and argument by all the
3 parties, I think you better put a new scheduling factor
4 into your preparations.

5 MR. FREIDIN: I take it, Madam Chair,
6 that should the coalition case not proceed and the
7 Board wished to reschedule certain things, that we will
8 have an opportunity to speak to the Board at that time?

9 MADAM CHAIR: Well, you will, Mr.
10 Freidin, but the Board will certainly be very adamant
11 that if we don't hear the coalition case - and we are,
12 of course, very hopeful that we will - but if for some
13 reason that won't happen, that time won't be left
14 unused, this hearing will be over well in advance of
15 the date that's set right now.

16 MR. FREIDIN: Well, I would just ask that
17 the Board allow me to make submissions regarding any
18 reduction in the time frame for the proponent to
19 prepare its reply evidence.

20 MADAM CHAIR: The Board always listens to
21 your submissions, Mr. Freidin.

22 MR. FREIDIN: Thank you, Madam Chair.

23 MR. CASSIDY: Madam Chair, if that is the
24 case, would the Board also be moving up - I don't think
25 there's been an actual schedule set for the New

1 Liskeard or North Bay satellite hearings - would the
2 Board be moving those up as well?

3 MADAM CHAIR: Absolutely, Mr. Cassidy.
4 Everything would, everything would be moved up, and I
5 think as it stands now those hearings are set in the
6 time just before the Ministry of the Environment's
7 case. There was three weeks or a month set aside in
8 the spring.

9 MS. SEABORN: I think actually, Madam
10 Chair, they're scheduled at the moment for just after
11 the presentation of our case.

12 MADAM CHAIR: Just after, all right.

13 MS. SEABORN: I think when you were doing
14 the scheduling the Board had indicated, because of our
15 client's desire to call its case in Toronto and the
16 Board had anticipated being in North Bay for NOTO's
17 case that you would do the North Bay satellite hearing
18 and NOTO's case and then return to Toronto for a break
19 in the travel schedule and hear MOE's case, and then
20 the remainder of the satellite hearings, and then there
21 was another break until the OFIA reply was to start at
22 the end of May.

23 MADAM CHAIR: Thank you for reminding the
24 Board, Ms. Seaborn.

25 On another matter, there was a date that

1 Mr. Pascoe brought to my attention that a scoping
2 session for the OFAH evidence was set some time ago for
3 September the 16th. I think that date is out the door
4 right now. I think you should just scratch it off your
5 calendars. We'll cancel the September 16th date for
6 scoping that evidence.

7 Do any of the parties wish to comment now
8 about the task to which Mr. Beram will be asked to
9 undertake by the panel? At the end of this session we
10 are going to instruct Mr. Beram to give us advice on
11 the various options available to us with respect to
12 obliging parties to conform with deadlines and Board
13 rulings and so forth.

14 I believe, Mr. Beram -- the Board will
15 instruct Mr. Beram to consult with the parties on
16 whatever advice he intends to give the Board before it
17 reaches us, so certainly you will have an opportunity
18 to make some input into that.

19 Is there anything the parties wish to say
20 to the panel at the present time?

21 MS. SWENARCHUK: Madam Chair, I would
22 suggest that it be appropriate for parties to be given
23 an opportunity to submit to you in writing what is
24 essentially legal argument and several weeks to prepare
25 it. I think that most of us would like a chance to

1 think that through and do some research before
2 commenting to this sort of matter. It can easily be
3 dealt with in writing.

4 MADAM CHAIR: Is it agreed by the parties
5 then that they will await receipt of Mr. Beram's letter
6 and respond in writing to that letter?

7 MR. CASSIDY: (nodding affirmatively)

8 MADAM CHAIR: I see heads nodding, so the
9 Board will assume all the parties agree.

10 MR. FREIDIN: Any sort of timing, Mr.
11 Beram?

12 MR. BERAM: It will be fairly swift, I
13 can assure you, Mr. Freidin.

14 MR. FREIDIN: Sounds like you've been
15 around here for a long time.

16 MADAM CHAIR: Mr. Hanna, is there
17 anything else you wish to say to the Board today with
18 respect to your submissions on the proposed scheduling?

19 And, furthermore, can you commit to a
20 date at which you could inform the Board of whether the
21 coalition is firmly committed to making a case or must
22 regretfully not make a case?

23 MR. HANNA: Regarding the latter matter,
24 I will inform the Board at the latest by the end of
25 this week when you will have the final answer from the

1 coalition. I have to speak to them and see when they
2 can give me the final decision.

3 MADAM CHAIR: You will let us know by
4 Friday, Mr. Hanna?

5 MR. HANNA: Yes, Madam Chair.

6 Madam Chair, another matter that is
7 somewhat related, and that flows from Mr. Beram's
8 letter of August 28th, 1991 to myself, is the
9 suggestions in the letter, and I quote:

10 "Given your past performance you might
11 not be able to meet this new proposed
12 schedule."

13 And there are a number of suggestions
14 made in that letter regarding both the coalition's
15 failure and the OFAH's failure to meet deadlines set
16 out by this Board.

17 Likewise, I was personally chastised by
18 one of the Board members regarding my performance
19 before this Board. It's a matter that's caused me
20 great personal concern and also concern of my client.

21 It is a matter that has been in gestation
22 and I actually have retained legal counsel and are
23 working on that matter, but I want to make it very
24 clear to the Board on the record that there is nothing
25 that I know of to support those allegations, that my

1 performance before this Board has always been one of
2 walking the extra mile, not only walking the extra mile
3 in the sense of doing it, but also in spirit.

4 I have done everything personally
5 possible and believe the Federation has done more than
6 any other public interest group that I know that has
7 been involved in a hearing like this to walk the extra
8 mile and I would simply say that I find those
9 allegations particularly concerning, both personally
10 and to my client and, hopefully, if this schedule goes
11 ahead, that that won't be an issue we have to address
12 again.

13 Thank you, Madam Chair.

14 MADAM CHAIR: Thank you, Mr. Hanna. The
15 Board is very hopeful that the coalition will present a
16 case. We think we've done everything we can to
17 encourage your clients to do that. Factors that you
18 have pointed to with respect to intervenor funding are
19 out of this panel's control. We think we've done
20 everything we can to make it possible for your clients
21 to put in evidence and we hope that that will be the
22 outcome of all of this discussion.

23 Do any of the parties have anything to
24 say to the Board?

25 (no response)

1 All right. We will adjourn this session
2 and wait to hear from Mr. Hanna on Friday as to when we
3 will know finally when Mr. Hanna's case will begin.

4 And, Mr. Hanna, the Board will be ruling
5 on the matter of your proposed schedule and the Board
6 still wishes to receive in person that firm commitment
7 from your clients with respect to the decision and the
8 ability to proceed, and we will have Mr. Beram get in
9 touch with you and your clients on that matter.

10 Thank you.

11 Mr. Hunter, we are scheduled to do the
12 scoping of your session. The Board will take a break
13 and we will be back in 15 minutes.

14 MR. HUNTER: Thank you.

15 MADAM CHAIR: Thank you.

16 ---Recess taken at 2:10 p.m.

17 ---On resuming at 2:30 p.m.

18 MADAM CHAIR: Please be seated.

19 Mr. Hunter?

20 MR. HUNTER: Good afternoon, Mrs. Koven,
21 Mr. Martel.

22 MADAM CHAIR: Mr. Martel and I have gone
23 over your written evidence in some detail and we have a
24 number of questions to put to you so that you can
25 answer them in your case.

1 Our first question - and we will begin
2 with Panel 1 - the Board understands from Panel 1 that
3 the Windigo Tribal Council has decided to not be a
4 separate party but to be the one group within the NAN
5 organization who also wishes to say something, and when
6 we read through the witness statement we understood the
7 reasons with respect to their participation in resource
8 development in the past, the various agreements that we
9 have gone over in detail and will address in Panel 4,
10 and we also wanted to know whether another reason that
11 Windigo Tribal Council is prominent in the NAN case has
12 to do with the fact that the four communities it
13 identifies are those that have been most impacted by
14 timber management so far, or are on the front line of
15 advances in timber management compared to the rest of
16 the NAN communities and we simply wanted some
17 clarification of that.

18 MR. HUNTER: Thank you.

19 MADAM CHAIR: The Board has questions
20 that it will put to you in Panel 4 about the memorandum
21 of understanding and other agreements between NAN and
22 Ontario, but we were wondering if some of those
23 questions should also be directed to Grand Chief
24 Cheechoo, or would you prefer that Charles Fox be the
25 witness who answers those in Panel 4? And we leave

1 that for you to decide.

2 MR. HUNTER: May I advise the Board on
3 that?

4 MADAM CHAIR: Yes. On page 16 of Panel 1
5 there's a reference to the Kayhana Tribal Council Land
6 Use and Occupancy Study. That study was recommended to
7 us by Mr. Fahlgren himself during a satellite hearing
8 in Red Lake and he suggested to the Board that it's a
9 source of information and the type of information that
10 would assist timber management planning.

11 We understand from the evidence that some
12 part of this study has not been translated completely
13 from the language in which it was written, but we want
14 to have some comments from your witnesses about whether
15 information provided in that detail, in that format, is
16 the sort of information that they see the NAN
17 communities giving to MNR with respect to the
18 identification of AOCs and other matters in timber
19 management planning, or is it in fact not the type of
20 information that your communities sees giving to MNR or
21 using in a useful way in timber management planning?

22 MR. HUNTER: Can we try to address that
23 in Panel 4 with Mr. McKibbon?

24 MADAM CHAIR: That is just fine.

25 On page 17 there's mention of an issue

1 that arose early in the hearing, Volume 7 actually of
2 extending the terms and conditions of the Class EA
3 north of the 52nd parallel. The Board has before it
4 evidence in Volume 7, Volume 67, Volume 176, and also
5 in the terms and conditions of June, 1989 and August,
6 1990 and we thought that that matter had been dealt
7 with within the hearing when we heard the evidence of
8 Mr. Bisschop.

9 But we want to know from your witnesses
10 if that matter has been satisfactorily dealt with in
11 the terms and conditions or any agreement with MNR.
12 You can tell us that's not a concern of yours, that's
13 fine, we just don't know where it stands right now.

14 MR. HUNTER: We can deal with that in
15 Panel 5, Madam Chair.

16 MADAM CHAIR: Thank you. Those were the
17 questions the Board had with respect to Panel 1.

18 With respect to Panel 2, I don't think
19 we've ever received a resume for Mr. Frank McKay, and
20 is he going to be in Panel 1 or is he going to be only
21 in Panel 2?

22 MR. HUNTER: I believe that he was in 1
23 and 2 and I apologize. I thought that we had sent a
24 resume for him. Yes, on Panel 1, his resume is at page
25 28 of the witness statement.

1 MADAM CHAIR: All right, page 28. Page
2 28 of Panel 1?

3 MR. HUNTER: Yes.

4 MADAM CHAIR: Yes, it is. Sorry, we were
5 looking at the others in the beginning of the document.

6 MR. HUNTER: Yes.

7 MADAM CHAIR: Thank you very much. And
8 he will be in Panels 1 and 2?

9 MR. HUNTER: 1 and 2, that's correct.

10 MADAM CHAIR: Okay, thank you. Will Ms.
11 Rosie Mosquito be providing any translation that might
12 be required for witnesses in your Panels 2 and 3?

13 MR. HUNTER: Yes. Translation will be
14 required in Panel 2. Mrs. Georgina Fox and Mr.
15 Cromarty will speak in both English and in Oji-Cree,
16 Ojibway. I'm not sure that we will require translation
17 for him in that context, but definitely for Ms. Fox.

18 And Panel 3 - I'm sorry I'm anticipating
19 you - in Panel 3 there will be several persons who do
20 not speak English and Ms. Mosquito will be assisting
21 them and they are all of the persons from Osnaburgh and
22 I believe there will be an individual who's not
23 identified in this statement who is an elder from
24 Saugeen. That one person has asked to appear with the
25 chief. Their statements will not be any different in

1 context from what is here. So there will be four
2 people who will require assistance.

3 MADAM CHAIR: Thank you, Mr. Hunter.

4 As you know, the Board has retained the
5 services as well of Mrs. Victoria Maxwell and Mrs.
6 Maxwell travelled with the Board to hear the evidence
7 of Grand Council Treaty No. 3 and she will be present
8 during the evidence of your witnesses as well. So if
9 there's any way that she can assist Ms. Mosquito, then
10 we will rely on you to coordinate that effort.

11 MR. HUNTER: Thank you.

12 MADAM CHAIR: On another matter, as you
13 know we routinely ask witnesses to be sworn in and have
14 tried to explain that's not intimidating and it's not
15 because we don't believe they're going to tell us the
16 truth, and with respect to the witnesses for Grand
17 Council Treaty No. 3, a number of them did so in their
18 own fashion with respect to affirming their
19 participation and their evidence, and they did it with
20 their own traditional means.

21 And we raise this because we read very
22 carefully Professor Grant's report on the justice
23 policy and he was critical of the over legalistic
24 approach that is sometimes taken with respect to these
25 matters, and we simply want you to inform your

1 witnesses that this is what we do and we don't want
2 them to be surprised and they, of course, are free to
3 affirm their evidence in any way they choose to do so.

4 MR. HUNTER: I had intended to speak to
5 each one and I think they will make individual choices.
6 I think there will be some individuals who will be
7 quite happy swearing on the Bible, others would be less
8 comfortable, so I will leave that to each individual.

9 MADAM CHAIR: As long as you have them
10 prepared and they're not offended by that.

11 With respect to your witness Panel No. 3,
12 it's very straightforward and the Board doesn't have
13 any particular questions with respect to that evidence.

14 MR. HUNTER: Thank you.

15 I might add -- well, I will address some
16 of those issues. I wanted to make some comments on
17 scheduling and, in that context, perhaps I will address
18 issues at that point.

19 MADAM CHAIR: Okay, fine.

20 Now, with respect to Panels No. 4 and No.
21 5, the Board does have a series of questions beginning
22 with Charles Fox's evidence.

23 And will Mr. Fox be the best person to
24 describe how all the various agreements that NAN and
25 Windigo Tribal Council have with Ontario, how those fit

1 into timber management planning? Now, the Board has
2 specific questions with respect to that, but is Mr. Fox
3 the one that will be dealing primarily with questions
4 of that nature?

5 MR. HUNTER: I think Mr. Fox is the best
6 person, as between Mr. Fox and Mr. McKibbon, to talk
7 about the background of the agreements and how they are
8 important in the broadest context with respect to
9 resource development from an aboriginal perspective.

10 I think Mr. McKibbon is the best person
11 to then take that experience and those agreements and
12 to translate that into the planning evidence which we
13 have given to the Board with respect to timber
14 management.

15 I think equally that Professor Grant is
16 also an effective witness to deal with those issues,
17 again in a broader -- so you will have three different
18 people--

19 MADAM CHAIR: Yes.

20 MR. HUNTER: --dealing with the same
21 pieces of paper but looking at them from very different
22 perspectives.

23 MADAM CHAIR: All right.

24 MR. HUNTER: And how it was that we
25 attempted to use those negotiations and those pieces of

1 paper to effect resource management planning in
2 northern Ontario.

3 But with respect to your specific
4 question, Mr. McKibbon, in my view, would be the best
5 person to take the experience, the documents and then
6 translate them into the timber management planning
7 process for you.

8 MADAM CHAIR: Okay, thank you. Now, with
9 respect to Mr. McKibbon's evidence in Panel 4.

10 MR. HUNTER: Yes.

11 MADAM CHAIR: He refers on various pages
12 to the Musselwhite Planning Agreement, which the Board
13 has gone over carefully, and that is Appendix 4, 4B.

14 MR. HUNTER: Yes.

15 MADAM CHAIR: Mr. McKibbon makes the
16 statement on page 25 that:

17 "With respect to the Musselwhite and
18 other agreements MNR doesn't know how to
19 incorporate these agreements into the
20 timber management planning process."

21 And he's really put his finger on the
22 Board's problems in this area as well. The Board
23 doesn't see the fit between various resource
24 agreements, particularly the September 30th, 1990
25 planning agreement--

1 MR. HUNTER: Yes.

2 MADAM CHAIR: --with respect to how all
3 this fits into what is intended to be accomplished in
4 timber management planning.

5 We have more questions on the specifics
6 of that, but Mr. McKibbin certainly has put his finger,
7 as I said, on what the Board finds a little perplexing.

8 MR. HUNTER: I might add that - we'll
9 have to present evidence - Cabinet just agreed and
10 signed the planning agreement and those documents are
11 now being signed by the Windigo chiefs and they're
12 being signed by Cabinet within the next week.

13 MADAM CHAIR: Well, that was another of
14 the Board's questions, where that one stood.

15 MR. HUNTER: Now, as we understand, it's
16 approved by Cabinet and that process will go on line
17 presumably no later than October 1, 1991 and,
18 therefore, the issue of how issues under the Crown
19 Timber Act will be dealt with will, in fact, be dealt
20 with under that planning agreement pursuant to the
21 terms and conditions of the agreement. So that the
22 linkage has been made, here's the agreement.

23 MADAM CHAIR: Of that agreement, but not
24 of timber management planning.

25 MR. HUNTER: That's correct.

1 MADAM CHAIR: We'll get to that in a few
2 minutes.

3 MR. CASSIDY: Do you, Mr. Hunter, intend
4 to have a witness to give evidence on that?

5 MR. HUNTER: On...?

6 MR. CASSIDY: What you just said.

7 MR. HUNTER: Specifically on what? With
8 the document itself?

9 MR. CASSIDY: The developments in Cabinet
10 and what the anticipation of your client is flowing
11 therefrom.

12 MR. HUNTER: Well, Mr. McKibbon can give
13 evidence.

14 MADAM CHAIR: All right, thank you.

15 On page 28, Item 3 Mr. McKibbon points
16 out that there's a wealth of biological data on Indian
17 traditional harvesters which could be used in the
18 timber management planning process, and this is what
19 seems obvious to the Board as well in going over your
20 evidence for Panels 4 and 5.

21 In various of the agreements that you
22 have signed, the Dona Lake Agreement and the St. Joe's
23 Agreement and the Cedar Channels Agreement - well,
24 that's a separate licencing arrangement - but in the
25 agreements with respect to the mining projects, there

1 are provisions made in those agreements to do specific
2 kinds of data collection.

3 Now, is it going to be your position that
4 MNR should think of a way of incorporating that data,
5 or will NAN be saying to MNR: We're participants in
6 timber management planning and we want you to take this
7 data and this is part of our contribution to the
8 process.

9 We don't see the link between money being
10 spent on collecting data throughout NAN areas and MNR's
11 timber management planning process. Obviously there's
12 no point in MNR staff running around getting all the
13 information they can on a traditional land use when
14 that information seems to be being collected very
15 systematically under the terms of various agreements,
16 not that it covers all their communities and land
17 bases, but...

18 MR. HUNTER: Okay, may I correct. The
19 evidence with respect to the Musselwhite Agreement, the
20 planning portion, I'll ask Professor Grant and Mr.
21 McKibbin to address that in Panel 4, particularly
22 Musselwhite.

23 MADAM CHAIR: All right.

24 MR. HUNTER: Professor Grant particularly
25 since he carried it through the whole process.

1 MR. CASSIDY: You're talking about the
2 Cabinet approval?

3 MR. HUNTER: Yes.

4 MR. CASSIDY: Okay.

5 MR. HUNTER: I mean, I have no difficulty
6 doing that, Mr. Cassidy. The only issue is it doesn't
7 apply, as I say, in this area because it's outside the
8 area of the undertaking.

9 MR. CASSIDY: That's fine. As long as I
10 have a witness I can cross-examine, if it requires it.

11 MADAM CHAIR: With respect to the Dona
12 Lake Agreement and the St. Joe Agreement, there are
13 provisions in that agreement for employment
14 opportunities for NAN communities and also attempts to
15 enlarge the economic base of the communities.

16 MR. HUNTER: Yes.

17 MADAM CHAIR: And we find those points
18 made in your Panel 5 evidence with respect to terms and
19 conditions, and we would simply point out that, for
20 example, Item 20(a) on page 31 of your Panel 5
21 evidence, which is a term and condition referring to
22 the allocation of timber for native communities, and
23 Item 20(b) which is employment of native peoples in
24 timber management, that the latter, with respect to
25 employment, is a quite different position than that

1 taken by Grand Council Treaty No. 3.

2 Not that the two positions should be the
3 same by any means, but the Board had questioned Grand
4 Council Treaty No. 3 fairly extensively on whether they
5 saw employment opportunities being something that they
6 wished to see specified in timber management planning
7 and their answer was no, they want to see more jobs and
8 so forth for their members obviously, but they weren't
9 taking the same position that your communities are
10 taking with respect to this issue.

11 The Board has another question with
12 respect to the Dona Lake and St. Joe agreements, where
13 there's a very complicated administration management
14 structure involving about six committees or so and in
15 the order of 45 or 50 people, members of your
16 communities and government people and people from these
17 companies who were involved in these agreements to
18 administer this, and the Board is interested in whether
19 these complicated committees seem to be working.

20 Now, we understand perfectly well that
21 these agreements are project specific and obviously
22 simpler to administer than timber management plans are,
23 we're not saying that the success or difficulties
24 encountered in administering those agreements will be
25 the same situation experienced by timber management,

1 should that type of committee system be used as well,
2 but we are interested in the experience of those
3 committees, as to whether your communities think
4 they've benefitted from that sort of a structure.

5 MR. HUNTER: I was just going to say that
6 one of the reasons why we're asking for Professor Grant
7 to appear and Mr. Fox is to comment on that with all
8 the good, bad and indifferent.

9 MADAM CHAIR: All right.

10 MR. HUNTER: Simply because it's the only
11 experience you basically have worked with. I'm sure
12 there are others, but...

13 MADAM CHAIR: Thank you. Now, the
14 planning agreement that you just referred to as being
15 approved by Cabinet and soon to be signed, MNR is a
16 signatory to that agreement, I understand that the
17 Ministries of Northern Affairs and Mines, MNR, MOE and
18 ONAD are all --

19 MR. HUNTER: They're all lining up, yes.

20 MADAM CHAIR: Are all signatories to that
21 agreement.

22 MR. HUNTER: Yes.

23 MADAM CHAIR: Now, that is just so
24 directly relevant to timber management planning. In
25 our reading of it, having heard no evidence of it, and

1 only reading what we have in Appendix 4A, that the
2 proposed interim planning boards will have extensive
3 involvement in land use and resource development and,
4 as you pointed out yourself, with respect to the Crown
5 Timber Act.

6 MR. HUNTER: Yes.

7 MADAM CHAIR: And so we really are going
8 to want to hear how these planning boards fit into
9 timber management planning, what role do they have with
10 respect to local timber management plans.

11 And with respect to the Interim Measures
12 Agreement of November 28th, 1990 which reaffirms the
13 memorandum of understanding, and the addendum to the
14 memo of understanding in 1976 and 1989 respectively,
15 again there is an item referring to Crown Timber Act
16 and requirements for the MNR to notify NAN of various
17 timber management activities.

18 The Board wishes to have an update of the
19 status of this agreement and what it means for timber
20 management planning.

21 And finally, the statement of political
22 relationship that was the most recently signed on
23 August 6th, 1991; was this agreement signed by NAN, and
24 we certainly see Grand Chief Bentley Cheechoo mentioned
25 in a news release that we received, and we want to know

1 what this means to timber management planning, if
2 anything.

3 We understand that it has to do with
4 self-government commitments or initiatives or the
5 willingness of government to work towards that
6 objective. We don't care about the political aspects
7 of that agreement, we just want to know if it has
8 anything to do with timber management planning in the
9 eyes of your client.

10 MR. HUNTER: Thank you.

11 MADAM CHAIR: Now, with respect -- to
12 finish off our questions on Panel 5, was your purpose,
13 Mr. Hunter, in sending the Board the final review
14 tables for the terms and conditions negotiations, did
15 you do that for reason of updating the Board on where
16 your terms and conditions have changed with respect to
17 evidence in Panel 5?

18 Is there anything in that document you
19 sent us that is different than the description of the
20 terms and conditions by Mr. McKibbin in Panel 4 and 5?

21 MR. HUNTER: May I see the subsequent
22 document that was filed, I just want to make sure I'm
23 referring to the...

24 I think, while there is nothing so
25 difficult about associating with those tables, having

1 been presented it, I then reviewed with Mr. McKibbon.

2 Those tables are principally the basis
3 for negotiations with the other parties and they are
4 not part of our evidence. They ought not to have been
5 filed for those purposes, and I apologize.

6 MADAM CHAIR: Well, they don't make too
7 much sense to the Board because they're only
8 check-off...

9 MR. HUNTER: That's right, they're
10 checklists.

11 MADAM CHAIR: And so it didn't make any
12 sense to us, we just wanted to know why you did it and
13 what we were to make it.

14 MR. HUNTER: That's right. It's my
15 mistake.

16 MADAM CHAIR: All right. And so the
17 terms and conditions that are described by Mr. McKibbon
18 in Panel 5 are the ones that the Board is concerned
19 with.

20 MR. HUNTER: Yes. That's all that's on,
21 that's all that we're discussing at this point in time.

22 MADAM CHAIR: All right. On page 2 of
23 Panel 5 evidence a reference is made to off-reserve
24 lands with respect to timber management planning
25 notice.

1 The Board takes it that this isn't just
2 traditional use and trapline management areas, but
3 would also be any lands that your communities would
4 wish to have a commercial interest in and don't
5 necessarily adjoin reserve areas and communities. We
6 want that kind of a clarification, we're not sure
7 what's meant by off-reserve lands.

8 On page 3 of witness Panel 5 and in other
9 places within this evidence Mr. McKibbin refers to the
10 trapline management areas as providing, we assume, a
11 good indication of traditional land use by your
12 communities, and this goes to the same question we
13 asked a short while ago; and, that is, what's been done
14 about plugging this information into timber management
15 planning, if anything at all, and do you see that as a
16 source of good information for timber management
17 planning?

18 On page 4, is NAN saying that all the
19 agreements negotiated with Ontario will take precedence
20 over timber management planning, both the agreements
21 that you've signed so far and any that you might sign
22 in the future?

23 On page 15 reference is made to where a
24 reserve land base is too small an area for expansion
25 and you want to show that there could be an expansion

1 of -- the Board isn't sure what, we're not sure what's
2 meant by that statement, that somehow reserve areas
3 will be expanded. We're not sure in what context that
4 statement was made.

5 Does that have to do with timber
6 management planning or with a separate process for
7 identifying reserve boundaries?

8 On page 17 Mr. McKibbon talks about, and
9 proposes in the terms and conditions, the use of an
10 environmental assessment matrix. Could Mr. McKibbon
11 please identify for the Board the source of that tool.

12 And we have heard from you, Mr. Hunter,
13 in the past you had some, I think it was complimentary
14 tree things to say, about the study approach of Ontario
15 Hydro with respect to this sort of a matter and we
16 weren't sure if this is where the environmental
17 assessment matrix came from or not.

18 On page 18 the terms and conditions refer
19 to specific mitigation and compensation measures. Are
20 these compensation measures similar to the ones stated
21 in the Musselwhite Compensation Agreement or has any
22 thought been given as to what compensation measures
23 would be? Do your communities receive any compensation
24 now from MNR with respect to timber management?

25 On pages 24 and pages 35 we seem to be

1 talking about bump-up and your terms and conditions
2 10(e)(b) and 10(h) and 42(e) and various others seem to
3 be saying to the Board that the Ministry of the
4 Environment doesn't have very much to do with bump-up
5 with respect to NAN communities, what NAN wants is an
6 automatic bump-up that kicks into place if
7 negotiations, in whatever form they take about timber
8 management issues, don't work out.

9 In other words, the way the bump-up
10 mechanism works now for other groups is that they must
11 request that of the Ministry of the Environment and
12 then MNR is ordered or not ordered to do a full
13 environmental assessment.

14 Do your terms and conditions altogether
15 say that a special provision must kick in and that
16 whenever -- and you cite various time periods and
17 various thresholds beyond which an automatic bump-up
18 seems to kick into place for NAN communities, and the
19 Board would like that clarified.

20 You refer to a concurrence by the
21 Director of the Environmental Assessment Branch of the
22 Ministry of the Environment, but it seems to the Board
23 that you've thrown out the idea of going through the
24 process of requesting bump-ups in any particular
25 situation affecting NAN communities.

1 Now, the Board might be misreading that
2 from the written evidence, but we definitely want
3 clarification on how you propose that be done.

4 On page 27 and elsewhere you refer to
5 buffer areas. Other than the herbicide/insecticide
6 spray buffers, is there a size to the buffer areas
7 which NAN has suggested with respect to timber
8 management?

9 On page 31, Item 20(a), this term and
10 condition talks about the allocation of timber for
11 native communities and does this term and condition say
12 that when timber management takes place near NAN
13 communities that members of those communities be given
14 a first opportunity for a timber licence or some other
15 allocation of timber and that that would apply to both
16 traditional use areas and any commercial timber
17 management that takes place?

18 In other words, are we talking about this
19 opportunity for NAN members to be involved in timber
20 management only within reserve areas, or everywhere in
21 the area of the undertaking, the entire area of the
22 undertaking. That's not clear to the Board.

23 You make it pretty clear in subsequent
24 references to chemical insecticides that you don't
25 really like them at all and you're in favour of the

1 moratorium and you really only support the aerial
2 spraying with Bt, but there is an item in term and
3 condition 48(b)(vi), you refer to chemical
4 insecticides, and the Board wasn't sure whether you
5 meant to say chemical insecticides or not. It's
6 deleted from all your other terms and conditions but it
7 was left in there.

8 On page 46 you identify the size of
9 buffer zones proposed for spraying activities. The
10 Board would like to know what the source of these
11 buffer zone sizes is.

12 On page 48, does the Board take it that
13 NAN and Windigo will have nothing more to do with the
14 draft guidelines exercise for the protection of
15 cultural and heritage resources?

16 It seems to us from reading your evidence
17 that you have proposed ways of dealing with those
18 resources yourself in your terms and conditions, and is
19 the Board simply to take it that you're finished with
20 and will have nothing to do in the future with these
21 draft guidelines and, so far as the Board knows they're
22 still draft, in a draft condition.

23 On page 49, is the Board to take it that
24 NAN and Windigo will be reporting to MNR the number of
25 moose and other wildlife they harvest traditional

1 foods? We weren't quite sure what this statement
2 meant:

3 "Nishnawbe-Aski Nation and Windigo Tribal
4 Council seeks to redirect Ministry
5 monitoring programs to collect
6 information on wildlife harvested locally
7 as traditional foods by native
8 communities.

9 The Ministry does not currently collect
10 this information or analyse this
11 information on a local level and,
12 therefore, has no database from which to
13 identify impacts of timber management
14 planning on those species of local
15 concern to native harvesters."

16 Our understanding so far is that native
17 communities do not report to MNR on the size of
18 wildlife harvested in their own areas.

19 And with respect to that question by the
20 Board, we received in the mail - well, somewhere in
21 these papers - we received in the mail an interim
22 enforcement policy brochure put out recently by MNR,
23 and we wondered if that is in any way related to this
24 term and condition.

25 And by the way, Mr. Freidin, is that

1 going to be evidence before this hearing?

2 MR. FREIDIN: I'm not sure of the
3 particular brochure that you're speaking about. I'm
4 aware of the policy that, in fact, interim enforcement
5 policy that was filed as an exhibit in Thunder Bay --
6 pardon me, in Fort Frances during Treaty No. 3's
7 occasion, Exhibit 1896 I think, I'm not sure, but
8 something around there.

9 I'm not sure whether this brochure merely
10 reproduces part of that for ease of reference. I can
11 look into that and --

12 MADAM CHAIR: Well, could you tell the
13 Board whether there's anything more recent than what we
14 got from you in Fort Frances?

15 MR. FREIDIN: Sure. And if there is, we
16 will make sure that it gets appropriated somewhere,
17 some way into the evidence.

18 MADAM CHAIR: This is a little off the
19 point, Mr. Freidin - and, sorry, Mr. Hunter - but the
20 Board has been keeping track all summer when it reads
21 the newspaper of various announcements of study groups
22 and task forces and all sorts of activities going on
23 with respect to wildlife management and old forest
24 protection and there were three or four different
25 announcements in the paper, and the Board would like

1 some clarification - we'll ask for it when we begin the
2 hearing again - from MNR about what those initiatives
3 mean and how they're tied into the evidence we have
4 been receiving at the hearing, and we will identify for
5 you what we have read tape in the newspapers
6 specifically.

7 Thank you.

8 MR. FREIDIN: This brochure though that
9 you received, is it an actual glossy or...?

10 MR. MARTEL: Yes.

11 MADAM CHAIR: It's a matte blue.

12 MR. FREIDIN: It's a printed document
13 with a cover?

14 MR. MARTEL: Yes. It's got a heading and
15 it's about five pages, two sides French and English.

16 MR. FREIDIN: Okay.

17 MADAM CHAIR: Mr. Hunter, those are our
18 questions for your witnesses.

19 MR. HUNTER: Thank you. I'm not familiar
20 with -- may I make a few comments?

21 MADAM CHAIR: Of course, that's what
22 we're here for.

23 MR. HUNTER: Thank you. What I really
24 wanted to do was to discuss with the Board and my
25 colleagues the scheduling for the hearing, what we

1 hoped our objectives would be.

2 Based upon my understanding of the
3 statements that have been filed by the other parties I
4 would hope that the following could occur: That unless
5 I'm misreading the statements of issues filed by my
6 colleagues and having now heard the questions raised by
7 the Board, I would hope that Panels 1 and 2 should be
8 finished by September the 26th, which is the Thursday.

9 MADAM CHAIR: Excuse me, that means, Mr.
10 Hunter, we'd be begin sitting --

11 MR. HUNTER: 25th I believe.

12 MADAM CHAIR: Wednesday the 25th.

13 MR. HUNTER: Yes. I would anticipate
14 that I would lead evidence for no more than an hour on
15 Panel 1, an hour, an hour and a half, and I would
16 anticipate that we would lead evidence for no more than
17 two hours with respect to Panel 2.

18 MADAM CHAIR: Mm-hmm.

19 MR. HUNTER: So again, based upon the
20 questions we have received to date, I would be hopeful
21 that we could complete Panels 1 and 2 by the 26th.

22 MADAM CHAIR: And that is a day and a
23 half?

24 MR. HUNTER: Yes.

25 MADAM CHAIR: All right.

1 MR. HUNTER: And I'm raising that because
2 the Board has graciously -- I have a commitment in
3 Michigan on the Monday, so we are resuming on the 1st,
4 as I understand it, which is October the 1st.

5 That may not be -- perhaps I should raise
6 it now. The Board was originally scheduled for Monday,
7 September the 30th, and I raised this matter with Mr.
8 Pascoe and I'll just raise it now.

9 I have a matter in Michigan on the
10 Monday, it was set down about six months ago, and I
11 ought to be there. So I was going to ask the Board if
12 we could reconvene on Tuesday at 1:30.

13 And what I am proposing is that our Panel
14 3 commence on Tuesday, October the 1st. Now, this is
15 the panel that poses for us the greatest logistical
16 concern because there are several parties coming from
17 out of Sioux Lookout, so we are going to need some time
18 to get them into Sioux Lookout, and I am presuming that
19 that panel will take two or three hours in direct
20 evidence, principally because of the translation.

21 And again, without presuming too much,
22 I'm presuming that cross-examination on that will take
23 a day or day and a half, and then here's where I am
24 going to ask for the indulgence of the Board and of the
25 counsel, and I'm not seeking any adjournment but just

1 simply an opportunity to rearrange our presentation.

2 Allan Grant must be in New Brunswick in
3 the first week of October and he is not available until
4 late in the afternoon on the 8th and the 9th. I'm
5 going to be issuing a subpoena for him to attend and I
6 would like him to make himself available on the
7 afternoon of the 8th, if flights can be arranged, and
8 all day on the Wednesday.

9 So assuming that I'm not too off on my
10 calculations, we would possibly complete Panel 3 by the
11 2nd of October, possibly early on Thursday. I would
12 then lead Panel 4 with Mr. McKibbon and Mr. Fox.

13 MADAM CHAIR: On October the 7th, Mr.
14 Hunter?

15 MR. HUNTER: No, I'm hoping October the
16 3rd.

17 MADAM CHAIR: Oh, okay.

18 MR. HUNTER: I will have them available.
19 I'm presuming that Panel 3, if we commence on the 1st,
20 will be completed by the 2nd and I will have Mr. Fox
21 and Mr. McKibbon available for Panel 4 on the afternoon
22 of the 2nd through to the 3rd so that the parties may
23 hear their evidence and cross-examination can begin.

24 Assuming cross-examination is completed
25 of Mr. Fox and Mr. McKibbon on Panel 4, I would then

1 propose to lead Mr. McKibbon in Panel 5 on October the
2 7th.

3 And I'm going to propose with respect to
4 his evidence that, with permission of counsel and we
5 will try to complete this chart before that time, as
6 you're aware we're involved in negotiations with the
7 Ministry and with the other parties.

8 What I hope to do with Mr. McKibbon's
9 evidence is to present to the Board a chart which will
10 say: Here are our terms and conditions, which you have
11 now, and here are the areas where we have agreement
12 with the other party or parties, principally MNR, and
13 here are the areas where we may have an agreement, and
14 here's the areas where we don't have an agreement, and
15 presumably that chart will reflect some reality as
16 between the parties so that there's no surprises to
17 anybody.

18 And then Mr. McKibbon would then -- we
19 would obviously give our reasons as to why we want our
20 terms and conditions, we would then explain to the
21 Board - hopefully I don't have to lead him - as to what
22 differences exist between ourselves and the other
23 parties which may be resolved in his view and those
24 that can't be resolved in his view, and then the other
25 parties would cross-examine.

1 I'm hoping that that could occur on the
2 7th and 8th and, as I say, his evidence will go in, I
3 would lead Mr. McKibbon on the 7th of October, and I'm
4 presuming that it would be a rather straightforward
5 exercise: Here are the terms and conditions, here's
6 our explanation and go through it. Mr. McKibbon would
7 then be cross-examined on Panel 5 on October the 8th.
8 I would then recall Mr. McKibbon and Professor Grant on
9 the 9th on Panel 4.

10 MR. MARTEL: You would start Grant on the
11 8th though?

12 MR. HUNTER: No, no, I would not, sir. I
13 will try to have him there if the flights can arranged
14 to get him into Sioux Lookout in the afternoon. I
15 think there's a problem there, but I will make Mr.
16 McKibbon available all day on the 8th for
17 cross-examination on Panel 5. I am hopeful, but not
18 confident, that his evidence can be completed in that
19 period of time.

20 Professor Grant would then be available
21 for Panel 4 on the 9th and I would ask Mr. McKibbon to
22 be available at that time as well. So whatever
23 cross-examination Mr. Fox can be -- hopefully any
24 questions to Mr. Fox can be dealt with on the 3rd and
25 Mr. McKibbon would come back with Mr. Grant, but the

1 evidence that would be given on the 9th would be the
2 evidence of Professor Grant.

3 And that would leave the 9th for
4 cross-examination of Professor Grant and for any
5 continued cross-examination, if required, of Mr.
6 McKibbon on Panel 5, if necessary.

7 The evidence that we are going to give is
8 not going to be substantially -- well, it will be no
9 different from that in the witness statements, save and
10 except for that evidence that we are going to enter as
11 a result of the Board's questions, and I will ask the
12 witnesses to address those questions.

13 MADAM CHAIR: So you're proposing if all
14 goes according to plan, Mr. Hunter, that you would be
15 finished 1:30 on October the 10th?

16 MR. HUNTER: Yes.

17 MR. FREIDIN: I'm just wondering, Madam
18 Chair, whether Mr. Hunter could give his estimate for
19 direct on Panels 4 and 5 and perhaps given the canvass
20 to see whether his estimates are right. I had spoken
21 to him about how long I thought I might be and I'm not
22 too sure if his estimates are going to be attainable.

23 MR. HUNTER: On direct?

24 MR. FREIDIN: No, in total. You have
25 certain time for cross-examination, unless other

1 parties aren't going to do any cross-examination I'm
2 not too sure whether some of the time frames -- I think
3 some of the time frames might be a bit optimistic. I
4 think we should go through the usual procedure.

5 MADAM CHAIR: I will canvass the parties
6 and get their estimates of cross-examination.

7 MR. FREIDIN: How long will you be in
8 direct, first, on Panel 4 and 5?

9 MR. HUNTER: Well, I would hope with
10 respect to Mr. McKibbin and Mr. Fox, I would hope no
11 more than two hours. I can't see it.

12 The materials have been filed with the
13 Board, there's not going -- as I say, other than the
14 questions which have been raised today, I'm not going
15 to be introducing any new evidence, and all we're going
16 to do is give an executive summary of the evidence we
17 have given. So I can't assume any more than two hours.

18 MR. FREIDIN: That is on 4?

19 MR. HUNTER: Yes.

20 MR. FREIDIN: And what about 5?

21 MR. HUNTER: 5. I'm presuming at least
22 half a day, I'm presuming all day on October the 7th,
23 I'm presuming from 1:30 to 5:00, and as much of that
24 evidence as we can put into the chart we will do, but
25 that's going to be difficult, we may not be able to do

1 that, we may have to do it orally.

2 So I'm presuming that that shouldn't take
3 any longer than three hours. That assumes that we have
4 anything to present before the Board on negotiation.

5 MR. MARTEL: Well, you've got two full
6 days then, Mr. Hunter, you're talking for Panel 5?

7 MR. HUNTER: Yes.

8 MR. MARTEL: You're talking about three
9 hours for Mr. McKibbin on Monday, and then you've got
10 the rest of Monday and all day Tuesday for cross?

11 MR. HUNTER: Yes.

12 MADAM CHAIR: Let's hear some estimates
13 from the parties with respect to how long they will be
14 in cross-examination.

15 Mr. Cassidy, you won't be cross-examining
16 on all the panels?

17 MR. CASSIDY: No, Madam Chair, we do not
18 intend to cross-examine with respect to Panels 1 or 2.
19 With respect to Panel 3 we anticipate two hours of
20 cross-examination; with respect to 4, we anticipate two
21 hours of cross-examination, with respect to Panel 5,
22 however - and this is subject to Mr. Hunt informing Mr.
23 Hunter and yourself otherwise - I would think we would
24 be a day in cross-examination.

25 The reason I say that is simple, Mr.

1 Hunt -- I have been trying to reach him to confirm that
2 time with him and if it's different he will inform the
3 Board right away, but on the basis of the present
4 proceeding we should proceed with a day of
5 cross-examination.

6 MADAM CHAIR: You were trying to get in
7 touch with whom, Mr. Cassidy?

8 MR. CASSIDY: Mr. Hunt is one of my
9 colleagues who will be cross-examining that panel.

10 MADAM CHAIR: All right, Mr. Cassidy. We
11 will return to this.

12 Ms. Gillespie?

13 MS. GILLESPIE: Yes. We do not intend to
14 cross-examine with respect to Panel 1 or Panel 2 and
15 with respect to Panel 3 I believe one hour would be the
16 outside limit.

17 With respect to Panel 4 we had intended
18 to try to cross-examine Mr. McKibbin only once,
19 although after hearing Mr. Hunter today it may be we
20 will have questions for him with respect to the
21 agreements. We thought those questions would be dealt
22 with by Mr. Fox when we prepared our statement of
23 issues, so that it's possible we would be
24 cross-examining for approximately two hours on Panel 4
25 and on Panel 5.

1 MADAM CHAIR: Thank you. Mr. Freidin?

2 MR. FREIDIN: I think an hour on Panel 1,
3 an hour on Panel 2, a half a day on 3, a half a day on
4 4, and a day on 5.

5 MADAM CHAIR: Mr. Hunter, how many - that
6 adds up just quickly to four days of cross-examination.
7 How much did you figure into your overall nine days?

8 MR. HUNTER: For what, Madam Chair?

9 MADAM CHAIR: For cross-examination.

10 MR. HUNTER: Oh, when I worked my
11 schedule through?

12 MADAM CHAIR: Uh-huh.

13 MR. HUNTER: It wasn't that dissimilar
14 from what has been presented, except for Panel 5. I
15 had not thought that -- well, a day from the industry
16 and a day from MNR.

17 MADAM CHAIR: And Mr. Martel has pointed
18 out that the Board would stay over on October the 10th,

19 MR. MARTEL: 13th. Pardon me.

20 MADAM CHAIR: The 10th. We could stay
21 over the 10th and the 11th, if need be. If more time
22 were required at the end for 5, then we have those days
23 built into the schedule.

24 MR. HUNTER: At the threat of earning
25 your wrath, it's either your wrath or my family's

1 wrath, we have a commitment on Thanksgiving.

2 MADAM CHAIR: Oh, is that Thanksgiving?

3 MR. HUNTER: That's the commencement of
4 the Thanksgiving weekend.

5 MADAM CHAIR: 11th.

6 MR. MARTEL: Oh, we understand that.
7 We're just trying to be helpful.

8 MADAM CHAIR: That's the weekend.

9 MR. HUNTER: I don't see anybody else
10 helping me on that.

11 MR. CASSIDY: Well, I'm prepared to stay.

12 MADAM CHAIR: Thanksgiving is that Monday
13 the 14th.

14 MR. MARTEL: It's the thought of going up
15 there for a half day.

16 MR. FREIDIN: We understood that
17 sacrifices were traditional.

18 MR. HUNTER: Well, that certainly I think
19 would pressure everybody to complete it by the 10th and
20 I would rather hold everybody's feet to the fire and
21 let's get along.

22 MADAM CHAIR: Well, that's what we'll
23 certainly do. What about the 4th, if we can --

24 MR. HUNTER: I'm much happier to do that.

25 MADAM CHAIR: If we found we were falling

1 behind in the cross-examination of 4 we could put in
2 that Friday. We shouldn't. Nine days should be
3 enough.

4 MR. HUNTER: Why don't we plan on the
5 weekend. I'm sure Mr. Cassidy would be more than
6 pleased to cross-examine on Saturday.

7 MADAM CHAIR: The 5th and 6th.

8 MR. MARTEL: We would have no one there.

9 MR. HUNTER: I see. The 5th will be
10 fine.

11 MADAM CHAIR: The 4th rather.

12 MR. HUNTER: Sorry, the 4th will be fine.

13 MADAM CHAIR: If we find that the
14 cross-examination --

15 MR. HUNTER: I think it would be -- if we
16 were going to go to the 11th, I would suggest you would
17 have to be making your reservations to get out of
18 Thunder Bay right this minute. It may in fact be too
19 late to get a flight out on the 11th.

20 MADAM CHAIR: Well, let's look at a date,
21 hopefully we will leave October 4th--

22 MR. HUNTER: I think that's an excellent
23 suggestion.

24 MADAM CHAIR: --to accommodate the
25 process.

1 MR. HUNTER: That would go extremely
2 well.

3 ---Discussion off the record

4 MR. HUNTER: Well, the other option is,
5 if you have the energy, we could go later at night if
6 you want to schedule some evenings.

7 MR. MARTEL: It depends on Mr. Freidin.
8 It rests with Freidin.

9 MR. FREIDIN: Oh.

10 MR. MARTEL: The one day on Panel 5.

11 MR. FREIDIN: Or Mr. Cassidy.

12 MR. MARTEL: No, no, he's only got -- oh,
13 he's got a day too, well...

14 MR. FREIDIN: Why don't we just proceed
15 and just see how it goes.

16 MR. MARTEL: Things work themselves out
17 well when you're fighting the plot.

18 MR. FREIDIN: You know I've shortened my
19 cross-examinations in the past.

20 MADAM CHAIR: Yes.

21 MR. FREIDIN: It may happen again.

22 MADAM CHAIR: Well, as it stands, Mr.
23 Hunter, we are scheduled to finish your case on October
24 the 10th. Okay.

25 MR. HUNTER: Yes.

1 MADAM CHAIR: Which is three weeks
2 earlier than we had originally scheduled. We're
3 certainly not complaining.

4 MR. HUNTER: Do you want me to extend
5 that?

6 MADAM CHAIR: We're not complaining, Mr.
7 Hunter. We're not complaining.

8 MR. MARTEL: No, no. We're not asking
9 for more.

10 MADAM CHAIR: All right, very good.
11 Do any of the other parties have
12 questions of Mr. Hunter?

13 MR. CASSIDY: I have one question. The
14 reference to presenting the chart confuses me a little
15 bit. Is this chart going to be reporting on the
16 results of negotiations which are presently ongoing
17 between the parties pursuant to the negotiation process
18 we're doing in this hearing?

19 If so, my understanding is that those are
20 confidential negotiations which were going to be
21 reported to the Board by way of a report from the
22 mediator and not by any of the parties.

23 MADAM CHAIR: Please remind the Board,
24 Mr. Cassidy, of the date that was set for the first
25 report from the negotiations.

1 MR. CASSIDY: I would have to refresh
2 myself on that as well, Madam Chair. I think it was in
3 the fall, October or November.

4 MADAM CHAIR: I don't think it was that
5 late.

6 MR. CASSIDY: I thought our reply was in
7 three weeks.

8 MADAM CHAIR: Mr. Martel and I think it
9 was a date in September. So the negotiations are
10 continuing, is that what the Board's to --

11 MR. MARTEL: You're going to negotiate
12 everything off the table?

13 MR. FREIDIN: Daily.

14 MADAM CHAIR: Daily.

15 MR. CASSIDY: Well, as I indicated, Mr.
16 Martel, it was my understanding that those negotiations
17 were confidential and subject to a report by the
18 mediator.

19 MADAM CHAIR: The Board will ask Mr.
20 Pascoe to revisit past rulings on this matter and
21 remind the Board and the parties of when we have
22 scheduled the report of the negotiations.

23 MR. HUNTER: With respect to Mr.
24 Cassidy's comments, as I spoke I realized there might
25 be some difficulty. What I had hoped to do at least

1 was present those areas where there was agreement as
2 between ourselves, MNR and the forest industry, but
3 that may come with some difficulties. All I'm
4 concerned about is facilitating presentation.

5 It seems to me that where we have reached
6 agreement as between the parties, then we should
7 indicate to the Board where that agreement exists and
8 the basis for the agreement and to provide to the Board
9 a necessary level of evidence if the purpose of that
10 exercise was to facilitate the hearing, but the Board
11 ought to be, in my view, in the possession of
12 sufficient evidence - even if there is agreement
13 amongst the parties - so they can make their decision.

14 Now, the Board may say: Well, fair
15 enough but we want more evidence, and that's something
16 you have to think about. I wanted to basically
17 streamline the panel.

18 MADAM CHAIR: Well, the idea of the
19 negotiations is that the Board would want the parties
20 to focus the evidence on areas of dispute, not
21 agreement.

22 MR. HUNTER: Yes, exactly.

23 MADAM CHAIR: You don't have to spend a
24 lot of time telling us where things are agreed because
25 we will get your final combined documents in front of

1 us as to which conditions you agree on, but where you
2 see in Panel 5 all the areas that are in dispute, that
3 is what the Board is going to be looking very hard at,
4 Mr. Hunter.

5 MR. HUNTER: I appreciate. All I was
6 trying to do was answer Mr. Cassidy's point. In order
7 to facilitate the presentation I have to say, assume
8 there's 50 terms and conditions, we have general
9 agreement on 30 and the other ones we are going to
10 present was fairly cursory. That means that there are
11 20 which are in dispute.

12 So regardless, we have to sort of say:
13 Well, here is the status of the negotiation, otherwise
14 there's no point to the exercise. This is something we
15 are going to have to come to grips with.

16 MADAM CHAIR: Well, hopefully you will
17 discuss that with Mr. Freidin and Mr. Cassidy so that
18 the negotiations don't go off the rails with respect to
19 talking to the Board about some matters that you will
20 negotiate, but the timing might be delicate with
21 respect to the timing of your evidence.

22 But we certainly appreciate you telling
23 us where you cannot present much evidence because you
24 feel comfortable that certain terms and conditions are
25 being satisfied in the negotiation.

1 MR. HUNTER: That's right, and that is
2 why I was presuming the nature of the evidence. Based
3 upon our discussions and our understanding there are
4 some areas where there is substantial agreement,
5 therefore, why spend a lot of time on that, because
6 you're going to have that position before you.

7 MADAM CHAIR: Right.

8 MR. HUNTER: The only point I would wish
9 to make, and it is a source of some embarrassment, the
10 document that was filed with you, perhaps that could be
11 returned to Mr. Pasce and returned to --

12 MADAM CHAIR: Well, it doesn't make any
13 sense to us anyways, so...

14 MR. HUNTER: No. Thank you.

15 MR. CASSIDY: I have one other question,
16 in fact it's for the Board, Madam Chair.

17 You referred to a press release dated
18 August 6th, 1991 and you were asking about how it
19 relates to some of Mr. Hunter's evidence, and I don't
20 always get press releases from a variety of places and,
21 as much as you referred to it, would it be possible for
22 Mr. Pascoe to provide me with copy of that?

23 MADAM CHAIR: Of course.

24 MR. CASSIDY: Thank you, Madam Chair.

25 MR. HUNTER: Excuse me.

1 MADAM CHAIR: Ms. Gillespie, if you want
2 a copy?

3 MS. GILLESPIE: Yes, I would, thank you.

4 MADAM CHAIR: Mr. Freidin, it's from your
5 clients office but you can certainly --

6 MR. HUNTER: And if I might ask Mr.
7 Cassidy if either he or Mr. Cosman and I can talk about
8 one of the questions to Panel 4, the first question
9 with respect to Panel 4 in the statement of issues.

10 MADAM CHAIR: Would you like to talk
11 about that in this forum, Mr. Hunter?

12 MR. HUNTER: No, we don't have to. I
13 just wanted to indicate that I wanted to chat with, Mr.
14 Cosman?

15 MR. CASSIDY: (nodding affirmatively)

16 MADAM CHAIR: All right. Mr. Cassidy,
17 did you say Mr. Cosman is cross-examining?

18 MR. CASSIDY: As it presently stands, and
19 this is subject to some debate, Mr. Cosman will be
20 cross-examining with respect to Panel 4 and Mr. Douglas
21 Hunt, whose name I mentioned to the Board on previous
22 occasions, is scheduled to cross-examine with respect
23 to Panel 5 and I will leave it at that. It may change,
24 but I don't know.

25 MADAM CHAIR: Thank you, Mr. Cassidy.

1 MR. CASSIDY: I'm sorry, Madam Chair, I
2 will be dealing with Panel 3.

3 MADAM CHAIR: All right, thank you.

4 Mr. Freidin, do you have anything to say
5 to Mr. Hunter or anything clarifications?

6 MR. FREIDIN: I want to speak to Mr.
7 Hunter about accommodation and the life in Sioux
8 Lookout. I understand he's generally familiar with
9 that. Other than that, I'm finished.

10 MADAM CHAIR: All right. Any other
11 details we should discuss, Mr. Hunter, or are we
12 prepared?

13 MR. HUNTER: No, no, I think if I might
14 be excused, unless there's a question, I have a cab...

15 MADAM CHAIR: We're all finished and we
16 will see you in Sioux Lookout on the --

17 MR. HUNTER: 25th of September.

18 MADAM CHAIR: Now, it says 9:00 a.m.
19 we're starting. Is that -- on the Wednesday.

20 MR. HUNTER: You don't have to -- given
21 the amount of cross-examination --

22 MADAM CHAIR: Oh, right, we have a public
23 hearing that night. That's why we're there. I
24 understand.

25 MR. CASSIDY: Madam Chair, you just

1 reminded me of something I thought I should mention to
2 the Board, and this is purely -- I'm not going to
3 suggest you go on any tours again.

4 MR. MARTEL: Why not?

5 MR. CASSIDY: But it's been brought to my
6 attention that the recent blowdown which occurred, I'm
7 told over a 1,500 square kilometre area in northwestern
8 Ontario is accessible from Sioux Lookout by
9 approximately a half hour helicopter ride or less and
10 it could be seen in half a day, and I simply raise that
11 for anybody who is interested.

12 If they wish to witness the devastating
13 extent of that blowdown, if they would make that
14 interest known, I'm sure the MNR would be in some
15 fashion able to accommodate you.

16 MADAM CHAIR: We saw a very large
17 blowdown on our last -- in the Dryden area.

18 MR. CASSIDY: I'm advised - without
19 giving evidence, that's the Boise blowdown, and I'm
20 also advised that there's an emergency amendment
21 planning process underway to accommodate that which
22 people could view or be available to hear a
23 presentation from in the Sioux Lookout area.

24 I simply leave that with you. I know you
25 have a busy schedule, but it's there for you to think

1 about if you wish to make those arrangements.

2 MADAM CHAIR: Thank you, Mr. Cassidy.

3 MR. FREIDIN: In the same vein, in terms
4 of the time gap we talked about before, if the Board --
5 if there's something the Board believes it would like
6 to see in terms of site visits, Mr. Pascoe should
7 contact us and I'm sure we could, with the right amount
8 of lead time, arrange that sort of activity.

9 But you have done a lot of flying and
10 you've seen a lot of things, so I leave that with you.

11 MADAM CHAIR: Thank you, Mr. Freidin.

12 Thank you, Mr. Hunter.

13 MR. HUNTER: Thank you.

14 MADAM CHAIR: See you on September 25th.

15 MR. HUNTER: Thank you.

16 ---Whereupon the hearing was adjourned at 3:45 p.m., to
17 be reconvened on Wednesday, September 11th, 1991,
18 commencing at 1:30 p.m.

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